

JAN 30 1998

PATRICK FISHER
Clerk

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

JERRY P. MCNEIL;
MARIAN J. MCNEIL,

Plaintiffs-Appellants,

v.

UNITED STATES OF AMERICA;
COMMISSIONER OF THE
INTERNAL REVENUE SERVICE;
DEPARTMENT OF TREASURY,
sued as: The Secretary of the Treasury
of the United States,

Defendants-Appellees.

No. 97-5109
(D.C. No. 96-CV-624)
(N.D. Okla.)

ORDER AND JUDGMENT*

Before **ANDERSON, McKAY, and LUCERO**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined
unanimously that oral argument would not materially assist the determination of

* This order and judgment is not binding precedent, except under the
doctrines of law of the case, res judicata, and collateral estoppel. The court
generally disfavors the citation of orders and judgments; nevertheless, an order
and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

Plaintiffs appeal the district court's decision dismissing the individual defendants, see Fed. R. Civ. P. 12(b)(6), and granting the United States summary judgment on the remaining claims. We review the district court's dismissal of the individual defendants de novo. See, e.g., Grossman v. Novell, Inc., 120 F.3d 1112, 1118 (10th Cir. 1997). So, too, do we review the district court's summary judgment decision de novo, viewing the record in the light most favorable to the nonmoving party. See, e.g., J.B. v. Washington County, 127 F.3d 919, 923 (10th Cir. 1997). Summary judgment is appropriate only if there are no genuinely disputed material issues of fact and the moving party is entitled to judgment as a matter of law. See Fed. R. Civ. P. 56(c).

Upon consideration of the record and the parties' briefs, we AFFIRM the judgment of the United States District Court for the Northern District of Oklahoma for substantially the reasons stated in that court's order dated May 15, 1997. The mandate shall issue forthwith.

Entered for the Court

Stephen H. Anderson
Circuit Judge